

EXHIBIT 77

SECOND MAO DECLARATION PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

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ANIBAL RODRIGUEZ, et al.,
individually and on behalf of
all other similarly situated,
Plaintiffs,

vs.

Case No.
3:20-CV-04688

GOOGLE LLC, et al.,
Defendants.

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VIDEO-RECORDED DEPOSITION OF SAL CATALDO
VERITEXT VIRTUAL
THURSDAY, FEBRUARY 17, 2022

Reported by:
Anrae Wimberley, CSR No. 7778
Job No. 5057262

1 I've always drove Jeeps. I like a Lexus because my 09:28:49
2 last car was a Lexus. That was fun.

3 So I use Androids. I've stuck with
4 Androids.

5 BY MR. SANTACANA: 09:29:00

6 Q. In '09, when you first selected an Android
7 phone, why did you do that?

8 A. I'm not 100 percent sure. I just remember
9 it was a Droid 2. Maybe because I thought it looked
10 cool. I liked the features. It was on sale. You 09:29:17
11 know, all those things would have been factors in my
12 purchasing.

13 Q. The Droid 2 did look cool. I would
14 believe that. It wasn't particularly cheap, but
15 maybe it was on sale. 09:29:33

16 So I guess the reason I'm asking is
17 because you're suing Google for invading your
18 privacy and committing a tort against you, but
19 during the course of this case, you chose to buy a
20 phone directly from Google that runs the operating 09:29:50
21 system that you allege invaded your privacy.

22 Why would you buy it again?

23 A. Well, to be clear, I didn't buy the Google
24 Pixel directly from Google. I bought it from
25 Verizon. 09:30:10

1 I also thought that if -- 09:30:11

2 Q. You understand it's a Google phone though.

3 It's not --

4 MR. LEE: You know what, I don't think

5 Mr. Cataldo was finished with his answer. 09:30:17

6 Why don't you finish your answer, and then

7 Mr. Santacana can ask another question.

8 Go ahead.

9 THE WITNESS: So you said I bought it directly

10 from Google, which I did not do. I understand there 09:30:30

11 may not be a huge difference, but for clarity sake,

12 I bought it from the Verizon Store.

13 Part of the reason of that model was that

14 my existing phone had broken and there's not a lot

15 of options. And at the same time, I understand that 09:30:46

16 as part of litigation, I didn't think it was

17 appropriate to vary wildly from my existing

18 behaviors.

19 So in the sense that I don't think

20 continuing to have an Android phone, regardless of 09:31:02

21 brand, conflicts from the fact that I was violated.

22 If anything, the fact that I've been loyal to Google

23 Android for years, it felt more of a violation to me

24 that they would do this and continue to do this.

25 I'm not familiar enough with other brands. 09:31:26

1 If there was another brand that would make me feel 09:31:28
2 more comfortable, I would very much like to leave.
3 So far, there has not been any other brand
4 or ecosystem that has satisfied, but I don't think
5 that my choices in phone have any indication as to 09:31:44
6 how I feel about the practices.

7 BY MR. SANTACANA:

8 Q. Well, you use a Blackberry for work
9 because of its security features; right?

10 A. Correct. 09:32:00

11 Q. So you could have bought a Blackberry for
12 personal use instead of the Pixel 5, couldn't you
13 have?

14 A. I could have.

15 Q. Would you say the Blackberry satisfies 09:32:10
16 your desire for security and privacy for work
17 purposes?

18 MR. LEE: Objection to form.

19 Go ahead.

20 THE WITNESS: I'm not fully satisfied because 09:32:19
21 it still runs Android.

22 BY MR. SANTACANA:

23 Q. Your Blackberry runs Android?

24 A. It does.

25 Q. And is it your belief that the invasion of 09:32:28

1 privacy that you've alleged in this case is ongoing? 09:32:31

2 A. As far as I know, Google hasn't disputed

3 that or denied it, so I don't see any reason why it

4 wouldn't be ongoing.

5 Q. Why do you say that as part of this 09:32:46

6 litigation you didn't think it was appropriate to

7 vary wildly from your existing behaviors?

8 A. Because as far as I know -- for instance,

9 as you just said -- or at least you asked whether or

10 not this was still being done, right, whether or not 09:33:08

11 the data that I've tried to turn off was still being

12 collected.

13 If I were to stop doing that, there

14 wouldn't be -- you know, how would I know? Because

15 I'm part of the case. 09:33:24

16 So the only way to know what Google is

17 doing and changing is to have my consistency. I

18 signed up for something, and I'm going to see it

19 through to the end, even if I don't prefer that.

20 Q. I'm sorry, I don't really understand your 09:34:03

21 answer.

22 You're alleging that Google is actively

23 invading your privacy as you use your Google

24 Pixel 5; right?

25 A. As I use any Google device or Android 09:34:19

1 say it will not collect or save my data, and you 10:50:30
2 point me to that option, and so I'm turning that
3 option off. So if you send the data after I've
4 turned that off, then it's an invasion of privacy
5 because I've asked you not to use it. 10:50:45

6 So once I turn that off, once you tell me,
7 Hey, you can elect not to participate because here's
8 a setting that we are going to share and save your
9 data if you turn this on, I turn it off, my
10 expectation is the data is not saved or shared. 10:51:04

11 Q. So I want to make sure we're talking about
12 the same things.

13 So I'm drawing a distinction between a
14 world where Google is acting as the analytics
15 provider for the New York Times but isn't doing 10:51:23
16 anything with the data otherwise and a different
17 world where it acts as an analytics provider for the
18 New York Times but also saves it for other purposes
19 unrelated to what the New York Times has asked
20 Google to do. 10:51:41

21 Are you saying that the WAA button should
22 control both of those worlds or just one of them?

23 A. I think it should control both of those
24 worlds, because the way that it's described and laid
25 out to me as the user, it doesn't make that 10:52:02

1 distinction. It says you can choose and control the 10:52:07
2 information, and then there's an option that says,
3 Don't save the data.

4 Q. Okay. I think I understand.

5 Do you believe you've suffered any damages 10:52:49
6 as a consequence of the alleged invasion of privacy?

7 A. I do.

8 Q. What are those damages?

9 A. On a base level that experts can probably
10 quantify better than I can, the surreptitious taking 10:53:11
11 of my information damages me. There's invasion of
12 privacy, you know, intrusion and all that stuff are
13 torts for a reason. That there's a value to private
14 information intrinsic to the fact that it's private.

15 What that's quantified as, I can't 10:53:41
16 articulate. I can't tell you the value of my data.

17 Google can probably tell you the value of
18 my data because they are the ones that are
19 commoditizing it. But that privacy is important.
20 It's a core right. And the violation of that right 10:53:56
21 is a damage.

22 One way to figure that out is what did
23 Google make off of that data that should have been
24 arguably mine to make, right, on that level?

25 On another threshold, the fact that Google 10:54:18

1 was using my own device that I paid a charge that at 10:54:22
2 various times have data plans that I was actually
3 paying per gigabyte use or, at the very least, have,
4 you know, sort of slow downs if I use -- if I have
5 consumption of the device. If it's on Wi-Fi I have 10:54:41
6 bandwidth.

7 So it may be, you know, small
8 incrementally, but when it's doing it hourly over
9 years, that's use of my device that I paid money for
10 that a third party is now using without my consent. 10:54:57

11 So there's a way to add that all up that
12 degraded the property that I have.

13 Q. Okay.

14 So just to recap, you've identified the
15 basic damage of your privacy having been invaded is 10:55:15
16 damaged in and of itself; right?

17 A. Yes.

18 Q. There's the one you just named, damage to
19 your property, in the sense that its resources were
20 used against your will -- 10:55:38

21 A. Correct.

22 Q. -- depleted in some way. Could be
23 bandwidth or data or battery, I guess?

24 A. Um-hum.

25 Q. And you believe that's a quantifiable 10:55:51

1 amount of damage? 10:55:54

2 A. Yes.

3 Q. And then you believe that if Google

4 profited from your data, then that amount of profit

5 is damage as well? 10:56:04

6 A. Yes.

7 Q. Obviously, if it didn't profit off the

8 data, then that would not be the source of damage?

9 MR. LEE: Objection to form, calls for a legal

10 conclusion and expert opinion. 10:56:16

11 THE WITNESS: To me, that -- whether or not

12 Google actually profited, I think the potential loss

13 of profit that it took from me would be damage in

14 some way.

15 I understand I'm a lawyer, I'm not a 10:56:35

16 patent lawyer, but if I steal intellectual property,

17 there's no requirement that I go and actually make

18 the product, that it's still threat of confidential

19 information, right?

20 So there's -- it's the potential of my 10:56:47

21 loss of profit, not necessarily what Google profited

22 from.

23 So I think an easy way to quantify it

24 would be to see what Google made off of my data, but

25 I don't think Google has to profit, in my own 10:57:03